

1 Michael J. McQuaid, Esq.  
(Bar No. 95871)  
2 W. George Wailes, Esq.  
(Bar No. 100435)  
3 CARR, MCCLELLAN, INGERSOLL,  
THOMPSON & HORN  
4 Professional Law Corporation  
216 Park Road  
5 P.O. Box 513  
Burlingame, CA 94011-0513  
6 Telephone: (650) 342-9600  
Facsimile: (650) 342-7685  
7 gwailes@carr-mcclellan.com  
8 Attorneys for Judgment Creditor  
JANINA M. HOSKINS, TRUSTEE

9  
10 UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 In re:  
13 SAND HILL CAPITAL PARTNERS III,  
LLC, a California limited liability company,  
14 Debtor.

Chapter 7  
No. 08-30989 HLB

15 JANINA M. HOSKINS, Trustee of the  
16 Bankruptcy Estate of Sand Hill Capital  
Partners III, LLC, a California limited  
17 liability company, Debtor,  
18 Plaintiff,  
19 vs.  
20 GARY THORNHILL, an individual,  
21 Defendant.

Adv. Pro. No. 09-03109 HLB

TRUSTEE'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF EX  
PARTE APPLICATION FOR ORDER OF  
EXAMINATION AND WRITTEN  
DISCOVERY UNDER FRCP 69

22 The Court should permit Janina M. Hoskins, Trustee of the bankruptcy estate of Sand Hill  
23 Capital Partners III, LLC ("Trustee") to conduct post-judgment discovery of judgment debtor  
24 Gary Thornhill under Federal Rule of Bankruptcy Procedure 7069, Federal Rule of Civil  
25 Procedure 69 and California Code of Civil Procedure 708.110.

26 **A. Factual Background**

27 Trustee is the acting Trustee of the bankruptcy estate of Sand Hill Capital Partners III,  
28 LLC, Debtor. Declaration of W. George Wailes in Support of Application for Order of

26630-06133\iManage\4476236.1

Trustee's MPA iso Ex Parte App. for OEX &  
Written Discovery

1 Examination and Written Discovery (“Wailes OEX Decl.”), ¶ 2. On February 10, 2010, a  
2 judgment in the amount of \$700,000 was entered in favor of Trustee, and against Defendant  
3 Gary Thornhill (“Thornhill”). *Id.*, ¶ 3, Exhibit 1. Dkt No 69. Trustee has received \$168,355.99  
4 toward the judgment as a result of a charging order this Court issued on February 22, 2012,  
5 leaving \$531,644.01 owing that has not been satisfied. *Id.*, ¶ 4.

#### 6 B. Argument

7 The Court may issue an Order of Examination (“OEX”) and require Thornhill to respond  
8 to written discovery. The procedure on execution of a federal judgment is to use the procedure of  
9 the state where the federal court is located. Furthermore, the judgment creditor may obtain  
10 “discovery from any person--including the judgment debtor--as provided in these rules or by the  
11 procedure of the state where the court is located.” Fed.R.Civ.P. 69 (a)(1).

12 California Code of Civil Procedure provides that any time a money judgment is  
13 enforceable, a judgment creditor may apply to a court for an order of examination. Cal. Code  
14 Civ. Proc. §708.010. A judgment creditor may apply for an order requiring the judgment debtor  
15 to appear before the court to furnish information to aid in the enforcement of the money  
16 judgment. *Id.* §708.110(a). In addition, the judgment debtor may be required to respond to  
17 requests for production of documents. *Id.*, §§708.020-030.

18 Thornhill is a judgment debtor who still owes \$531,000 to Trustee. Trustee has the right  
19 to propound discovery under California law. Therefore, Trustee is entitled to propound written  
20 document requests and to conduct a debtor’s examination before the Court.

#### 21 C. Conclusion

22 The Court should order Mr. Thornhill to produce documents and appear to testify.  
23  
24  
25  
26  
27  
28

1 Dated: April 4, 2013

2 CARR, McCLELLAN, INGERSOLL, THOMPSON & HORN  
3 Professional Law Corporation

4  
5 By: \_\_\_\_\_

6 W. George Wailes  
7 Attorneys for Judgment Creditor  
8 JANINA M. HOSKINS, TRUSTEE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28